IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1377 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABU GULMAHMAD ALIAS TALIYO SINDHI

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1377 of 2004

MR AMRISH PANDYA FOR MS KRISHNA U MISHRA for Petitioner

MR IM PANDYA APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/04/2005

ORAL JUDGEMENT

1. By way of filing this Special Criminal Application, the petitioner has challenged the order passed by the Sub-Divisional Magistrate, Khambhaliya on

26th July, 2004 externing the petitioner from the Districts of Jamnagar, Rajkot, Porbandar and Junagadh in exercise of powers conferred upon him vide Section 56 of the Bombay Police Act, 1951.

2. The petitioner preferred statutory appeal against the order passed by the Sub-Divisional Magistrate, Khambhaliya, but vide order dated 8th October, 2004, of the Appellate Authority, the appeal came to be rejected of the petitioner.

3. The Sub-Divisional Magistrate, Khambhaliya issued show-cause-notice against the petitioner under Section 59 of the Bombay Police Act, 1951 in Externment Case No.5 of 2004. It was stated in the show-cause-notice that three criminal cases under Sections 324, 504, 147, 143, 307, 506(2) of the Indian Penal Code were registered against the petitioner, all before Jam-Jodhpur Police Station. The Sub-Divisional Magistrate, Khambhaliya also took into consideration other materials and came to the conclusion that the petitioner was ferocious, dangerous and of violent temper and was in habit of picking up quarrels with the innocent citizens. The petitioner was in habit of using force in public and thereby disturbed the public peace and created danger and fear amongst the common citizens. According to the Sub-Divisional Magistrate, nobody dared to file any complaint against the petitioner on account of his bullying tactics and fear created by him. Therefore, the petitioner was called upon to show cause, as to why he should not be externed from the above districts. In response to the show-cause notice, the petitioner appeared before the externment authority and after hearing the present petitioner and after taking into consideration materials available with the externing authority including incamera statements of the witnesses, vide impugned order, the petitioner was directed to be externed for two years from the above said districts.

4. Learned advocate Mr.Amrish Pandya for learned advocate Ms.K.U.Mishra for the petitioner and learned APP Mr.I.M.Pandya for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner to challenge the order of externment and the order rejecting the appeal of the petitioner, as opposed and controverted by the learned APP, it appears that this petition can be disposed of on the sole issue as to whether the externing authority applied mind properly to the material placed before him.

6. Learned advocate for the petitioner places on

record xerox copies of the orders passed in Criminal Case No.100 of 2002 of the Court of Judicial Magistrate (F.C.), Bhanvad, Jam-Jodhpur. The said case is taken into consideration by the externing authority at Sr.No.1, which is C.R.No.I-13/2002 registered before Jam Jodhpur Police Station. The papers tendered by the learned advocate for the petitioner is taken on record. The order passed by the learned Judicial Magistrate (F.C.), in the above said case indicate that on 7th February, 2002, learned Judicial Magistrate (F.C.) permitted the parties to compromise the offences under Sections 324, 504 and 114 of the Indian Penal Code. By passing the order below Ex.18 in the said case, the compromise was recorded by the learned Judicial Magistrate (F.C.) and so far as the offences under Section 324, 504 and 114 of the Indian Penal Code is concerned, the present petitioner was acquitted. Despite this fact, notices which came to be issued, thereafter on 20th February, 2004 this fact was taken into consideration by the externing authority. Meaning thereby that the fact of acquittal in a criminal case was not taken into consideration by the externing authority, while issuing notices under Section 59 of the Bombay Police Act to the petitioner.

7. The facts of this case, are squarely covered by the decision of the Division Bench of this Court, in the matter of SULEMAN HUSA DEVJI Vs. STATE OF GUJARAT & ANR., as reported in 1989 (1) G.L.R. 101. The Division Bench of this Court observed as under in paragraph No.4:-

> "From the foregoing discussion, it is clear that the externing authority has not applied its mind to a very relevant circumstance, which would have shown that witnesses are forthcoming for the purposes of giving evidence against the petitioner. On the other hand, the externing authority has mechanically applied its mind and has wrongly stated that the case registered at Crime Register No.58 of 1986 is pending trial. The fact clearly reveals that the said Crime Register No.58 of 1986 was tried by the Court and the petitioner has been acquitted in that case. This is a clear case of non-application of mind by the externing authority and it also spells out the mechanical way in which the externing authority has passed the order of externment. This single instance itself it sufficient to quash the order of externment. In view of this glaring mistake committed by the externing authority, it is not necessary for us to go into the other contentions such as failure of natural

justice, mala fides and denial of opportunity to hear the witnesses."

8. In view of the above, the impugned order passed by the Sub-Divisional Magistrate, Khambhaliya on 26th July, 2004 externing the petitioner from the District of Jamnagar and adjoining districts and the order passed by the Appellate Authority on 8th October, 2004 rejecting the appeal preferred by the petitioner against the order of Sub-Divisional Magistrate, Jam-Khambhaliya, both orders are required to be quashed and set aside.

9. In the result, the Special Criminal Application is allowed. The impugned externment order passed by the Sub-Divisional Magistrate, Khambhaliya on 26th July, 2004 and the order passed by the Appellate Authority on 8th October, 2004 both are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

[J. R. Vora,J.]

(vijay)